

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

CECIL FAIRLEY,

Petitioner,

v.

TROY BOWSER,

Respondent.

Case No. 2:17-cv-02016-JR

ORDER

Thomas J. Hester, Office of the Federal Public Defender, 101 SW Main Street, Suite 1700, Portland, Oregon 97204. Attorney for Petitioner.

James Aaron, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301. Attorney for Respondent.

IMMERGUT, District Judge.

On June 14, 2022, Magistrate Judge Jolie A. Russo issued her Findings and Recommendation (“F&R”), ECF 83, recommending denial of the Third Amended Petition for Writ of Habeas Corpus that Petitioner filed in this matter, ECF 49. Judge Russo further recommended that this Court dismiss the case and decline to issue a certificate of appealability. ECF 83. Petitioner filed objections to the F&R, ECF 87, and Respondent filed a response to Petitioner’s objections, ECF 88.

STANDARDS

Under the Federal Magistrates Act (“Act”), as amended, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). If a party files objections to a magistrate judge’s F&R, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act “does not preclude further review by the district judge, sua sponte,” whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

CONCLUSION

This Court has reviewed de novo the portion of the F&R to which Petitioner objects, *see* ECF 87. This Court accepts Judge Russo’s conclusions and Judge Russo’s F&R is adopted in full. Accordingly, Petitioner’s Third Amended Petition for Writ of Habeas Corpus, ECF 49, is DENIED. This case is DISMISSED with prejudice. This Court DECLINES to issue a certificate of appealability because Petitioner has not made a substantial showing of the denial of a constitutional right, as required under 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 10th day of January, 2023.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge